

#### **40.540 Setting off tax delinquency against bonus.**

- (1) If a claim is approved by the administrator or finally approved upon resort to the board of review, the administrator shall promptly certify to the secretary of the Finance and Administration Cabinet the names and addresses of persons found entitled to be paid, as shown in the application, and the amount payable to each.
  - (a) A copy of each such certificate shall be sent to the commissioner of the Department of Revenue, who shall promptly ascertain from the records of his agency whether any person proposed to be paid a bonus is delinquent in the payment of any tax liability to the Commonwealth. No delinquency shall be deemed to exist as to any asserted tax liability which is the subject of a bona fide dispute. If any delinquency be found to exist, the commissioner of revenue shall, within three (3) working days after this receipt of the certificate, furnish the details thereof to the secretary of finance and administration; and if no advice of tax delinquency is received by the secretary of finance and administration before the end of the fourth working day after his receipt of certification from the administrator, he shall, for the purposes of KRS 40.410 to 40.560, conclusively presume that no delinquency of tax liability to the Commonwealth exists, but such presumption shall apply only to the existence or absence of a set-off by the Commonwealth against a certified claim for a bonus, and shall not alter the facts as between the Commonwealth and any taxpayer.
  - (b) If no advice of tax delinquency is received within such allowed time, the secretary of finance and administration may approve payment in accordance with the certificate of the administrator, and may immediately draw a warrant on the State Treasury for a check in payment, except that no warrant shall be drawn by the secretary until sufficient funds have become available to pay the bonus authorized by KRS 40.410 to 40.560.
  - (c) Upon receipt of such warrant the State Treasurer shall issue a check in accordance therewith payable from funds made available for payment of the bonus authorized by KRS 40.410 to 40.560, and the same shall promptly be mailed to the payee thereof at the address shown in the certificate.
- (2) If the secretary of finance and administration shall, within the allowed time, receive advice from the commissioner of revenue of the existence of a delinquency on the part of any person having an approved claim for a bonus, as to any tax liability to the Commonwealth, the secretary of finance and administration shall note the same on the certificate of the administrator, withhold payment, and forthwith send to the claimant by registered mail a notice of the asserted delinquency, and the amount thereof, and that it is proposed that the same be set off against the bonus payment.
  - (a) If the secretary of finance and administration receives no protest in his office within ten (10) working days after recording such notice, he shall conclusively presume that the proposed set-off is just, shall apply the amount thereof in reduction or extinguishment of the payment certified by the administrator, and shall advise the commissioner of revenue of the amount set off against the bonus, which advice shall be noted by the commissioner of revenue on the

records of his office as a credit upon the delinquent tax liability.

- (b) If the tax set-off does not consume the entire amount of the bonus as certified by the administrator, the secretary shall draw a warrant upon the State Treasury for a check in the amount of the remainder, and upon receiving such check from the State Treasurer, shall send the same, together with advice of the set-off, by mail, to the payee at the address shown in the certificate of the director.
- (3) If the secretary of finance and administration receives from the claimant a protest of the asserted tax delinquency, within the allowed time, the secretary shall withhold approval for payment, and shall refer the protest to the commissioner of revenue for disposition.
- (4) If a tax set-off is made, and the claimant shall assert error with regard thereto, the exclusive remedy shall be by seeking refund from the commissioner of revenue.

**Effective:** June 20, 2005

**History:** Amended 2005 Ky. Acts ch. 85, sec. 45, effective June 20, 2005. -- Created 1988 (1st Extra. Sess.) Ky. Acts ch. 6, sec. 14.